

**LEGISLATIVE SERVICES AGENCY  
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**FISCAL IMPACT STATEMENT**

**LS 7048**

**BILL NUMBER: SB 518**

**NOTE PREPARED: Jan 21, 2011**

**BILL AMENDED:**

**SUBJECT: Bail.**

**FIRST AUTHOR: Sen. Waterman**

**FIRST SPONSOR:**

**BILL STATUS: As Introduced**

**FUNDS AFFECTED: \_\_\_GENERAL  
DEDICATED  
FEDERAL**

**IMPACT: Local**

**Summary of Legislation:** This bill has the following provisions:

- A. *Certain Sureties and Bail Agents to Post Cash Bond* – It provides that every surety for the release on bail of a person who executes a bail bond by depositing cash or securities in an amount not less than 10% of the bail must be: (1) an insurer represented by a bail agent; or (2) a person who is at least 18 years of age, a United States citizen, a resident of Indiana, related to the person for whom release on bail is sought within the third degree of affinity, and the owner of real or tangible personal property in Indiana with a net asset value that is acceptable to the authority approving the bond.
- B. *Redefining When Cause is Determined* – It provides that, for purposes of the Indiana bail law, a cause is determined when: (1) a judgment of conviction or acquittal is entered; (2) judgment is withheld; or (3) the defendant has been ordered or admitted to a diversion program.
- C. *Late Surrender Fees* – It requires a court to waive a late surrender fee assessed against a bail agent or surety, or extend the period for payment beyond the statutorily permitted period, or both, if: (1) a written request is filed with the court and the prosecutor; and (2) the surety or bail agent provides evidence satisfactory to the court that diligent efforts were made to locate the defendant. It specifies that 40% of the late surrender fees collected under the Indiana bail law must be deposited in the Police Pension Trust Fund, 40% must be deposited in the County Extradition Fund, and the remaining 20% must be deposited in the County Supplemental Public Defender Services Fund.
- D. *Minimum Amount of Bail Bond* – It provides that if the combination of requirements a court imposes on a defendant to admit the defendant to bail includes the requirement that the defendant execute a bail bond with sufficient solvent sureties, the amount of the bail bond must be at least 50% of the total amount of the bail.
- E. *Persons Charged with a Felony under IC 35-42* – It provides that if a person charged with a felony

under IC 35-42 (offenses against the person) is admitted to bail, the person: (1) shall be admitted to bail by executing a bail bond with sufficient solvent sureties, depositing cash or securities in an amount equal to the bail, executing a bond secured by certain real estate, or posting a real estate bond; and (2) may not be admitted to bail under the statute that allows admission to bail by executing a bail bond by depositing cash or securities in an amount not less than 10% of the bail.

**Effective Date:** July 1, 2011.

**Explanation of State Expenditures:**

**Explanation of State Revenues:**

**Explanation of Local Expenditures:** *Certain Sureties and Bail Agents to Post Cash Bond* – If courts permit criminal defendants to have surety agents deposit cash with the clerk of the court for pretrial release, the number of defendants in jail who await trial could be reduced.

*Redefining When Cause is Determined* – Under current law, the surety who has secured pretrial release for an accused person, is obligated to ensure the accused person appears in court until the cause is determined. The cause is determined when a person accused of a misdemeanor is either convicted, acquitted, the judgement is withheld, or if the accused person is placed in a diversion program. For persons who are accused of a felony, the cause is determined when the judgement results in either a conviction or an acquittal. This provision would permit sureties to end their obligation with the court to produce persons accused of felonies if a judgment is withheld.

*Person Charged with a Felony Under IC 35-42 (Offenses Against the Person)* – Defendants who are accused of committing a felony involving a crime against a person would not be able to be released from jail prior to trial if they cannot secure a surety agency who would post bail or pay either a full cash bond or a property bond.

Any effect on county operations will depend on the following factors:

- Each county's jail population and current capacity.
- The current policies that each court with a criminal jurisdiction has concerning pretrial release.
- The financial status of the criminal defendants.

County Jail Population – Depending on the number of felony defendants, their residential status, and their ability to pay any additional fees that this bill requires, this bill could increase the number of felony defendants who are held in county jails awaiting trial. The percentage of felony defendants who are unable to pay the higher fees and be required to remain in jail prior to trial is not known. The average cost per day is approximately \$44.

Jail inspections prepared by Department of Correction (DOC) staff in CY 2007 and by a jail inspector under contract with the Indiana Sheriffs Association in CY 2009 show the following information on offenders in county jails: (1) the number of persons in county jails on a one-day count who are a felony offender sentenced to DOC as a felon and serving time in a county jail, (2) the number of offenders sentenced for a misdemeanor, (3) the number of offenders on work release, or (4) the number of defendants awaiting trial.

Using this table, LSA estimates that the number of offenders who are in jail and awaiting trial increased by 9% between 2007 and 2009.

| <b>Inmates Identified in County Jails by DOC Jail Inspectors</b> |               |              |               |              |
|--|---------------|--------------|---------------|--------------|
|  | CY 2007*      |              | CY 2009**     |              |
| Felony Offenders Under DOC Contract                              | 1,682         | 10.1%        | 1,554         | 8.9%         |
| Sentenced as Misdemeanant  | 2,749         | 16.6%        | 2,654         | 15.2%        |
| Offenders on Work Release  | 541           | 3.3%         | 456           | 2.6%         |
| <b><i>Criminal Defendants Awaiting Trial</i></b>                 | <b>12,172</b> | <b>73.3%</b> | <b>13,291</b> | <b>76.0%</b> |
| Offenders in County Jails  | 16,603        | 100.0%       | 17,499        | 100.0%       |
| Source:  |               |              |               |              |
| * DOC Annual Inspection of Jails.                                |               |              |               |              |
| ** Paul Downing, Criminal Justice Planner, DLZ Indiana.          |               |              |               |              |

Local Court Rules and Policies – LSA examined the local rules of circuit and superior courts in 20 counties that had posted their pretrial release policies on the Indiana Supreme Court website. The policies that these courts follow vary, and the effect that this bill would have on jails in these counties will vary as well. Generally, defendants who are arrested for murder will be detained in jail until the completion of the trial. For Class D felons, counties will allow for pretrial releases either with a reduced bail amount, a 10% cash bond that is deposited with the clerk of court, or with no bail depending on the crime and the defendant's criminal history and ties to the community. As examples, Clay, Delaware, and Elkhart Counties all permit the pretrial release of defendants under the conditions mentioned. In contrast, Johnson County requires bonding by surety agents for all defendants.

Financial Status of Defendants – LSA could not find any information on the financial status of defendants awaiting trial. Anecdotal evidence suggests that persons who are not required to use a surety agent or bail bondsman are more likely to pay for their own legal representation or pay a portion of the county cost of legal defense for the accused person.

#### Background on Pre-Release Securities –

| Type of Release | Defendant Required To:  | Financial Liability for Failure to Appear | Liable Party |
|-----------------|---|---|--------------|
| Surety Bond     | Pay fee (usually 10% of bail amount), plus collateral if required, to commercial bail agent.        | Full Bail Amount                          | Surety Agent |
| Deposit Bond    | Post deposit (usually 10% of bail amount) with court; a portion is refunded when case is completed. |   | Defendant    |
| Full Cash Bond  | Post full bail amount with court.   |   | Defendant    |
| Property Bond   | Post property title as collateral with court.   |   | Defendant    |

**Explanation of Local Revenues:** *Bond Administration Fee* – This bill would permit a court to allow a surety to deposit a bail bond with the clerk of the circuit court that is 10% of bail. (See *Explanation of Local Expenditures*) A portion of the deposit, which would be less than 10% of the monetary value of the bond or \$50, can be retained as an administrative fee.

Counties have reported collecting between \$1.4 M and \$1.7 M. each year between 2005 and 2009.

| 2005        | 2006        | 2007        | 2008        | 2009        |
|-------------|-------------|-------------|-------------|-------------|
| \$1,541,153 | \$1,483,807 | \$1,754,658 | \$1,635,501 | \$1,480,253 |

**Late Surrender Fees** – Late surrender fees are charged to surety or bail bond agents when the surety or bail bond agent is not able to produce the defendant when the court requests the defendant to appear in court. This bill could reduce the amount of revenue that is collected from the Late Surrender Fee. It will also redistribute a portion of revenue that is collected from the fee and deposit it into the County Supplemental Public Defender Services Fund.

**Waiving Late Surrender Fee** – Currently, a court may waive the Late Surrender Fee if the surety agent does not bring a criminal defendant to appear in court. The amount of the Late Surrender Fee depends on how many days it takes for the surety agent to make the defendant appear in court according to the following table.

| <b>Late Surrender Fees</b>  |   |
|---|---|
| <b>Number of Days Before Bail Bond Agent Is Able to Produce Defendant After Notice by the Court</b> | <b>Late Surrender Fee as Percentage of Face Value of Bond</b> |
| Between 120 and 180 days  | 20%   |
| Between 181 and 210 days  | 30%   |
| Between 211 and 240 days  | 50%   |
| Between 241 and 365 days  | 80%   |

As proposed, the court would be required to waive the Late Surrender Fee if the surety can provide evidence that satisfies the court that the surety is making diligent efforts to locate the defendant.

**Redistributing Revenue from the Late Surrender Fee** – Currently, proceeds from the Late Surrender Fee are split evenly between the Police Pension Trust Fund and the County Extradition Fund. As proposed, each of these funds would receive 40% and the County Supplemental Public Defender Services Fund would receive 20%.

According to the *Indiana Judicial Report*, in CY 2009, counties reported collecting the following amounts from the Late Surrender Fee.

| 2005      | 2006      | 2007      | 2008      | 2009      |
|-----------|-----------|-----------|-----------|-----------|
| \$386,507 | \$522,073 | \$689,210 | \$868,123 | \$560,183 |

The Department of Insurance reports that 381 bail bond agents were registered in 2008.

**State Agencies Affected:**

**Local Agencies Affected:** Trial courts, county sheriffs.

**Information Sources:** *Indiana Judicial Reports*, 2005 through 2009.

**Fiscal Analyst:** Mark Goodpaster, 317-232-9852.